

Connecticut DRAFT RESPONSE TO 2009 E-FAME

October 28, 2010

This is the State of Connecticut Department of Labor, Division of Occupational Safety and Health (CONN-OSHA), formal response to the Enhanced Federal Annual Monitoring and Evaluation (FAME) Report for Federal Fiscal Year 2009, Appendix A, Summary of Findings and Recommendations.

Finding #1: Complaint & Referral Response - CONN-OSHA's FY2009 average of 7.24 days did not meet the five-day standard for average number of days to initiate a complaint inspection.

Response: CONN-OSHA continues to strive to improve its performance to meet the five-day standard. One Health Compliance Officer retired at the end of the third quarter and one Safety Compliance Officer was reassigned as a Safety Consultant to fill a vacancy due to retirement. A Health Compliance Officer was hired in August 2010 and a Safety Compliance Officer was hired in September 2010 to fill existing vacancies. The existing Health Compliance Officer commenced maternity leave in August 2010 and is expected back in early December 2010. Once the new compliance officers are trained and the Health Compliance Officer returns from maternity leave it is expected that the average number of days to initiate a complaint inspection will markedly improve.

Finding # 2: Fatality Case Files/Diary Sheets - Case diary sheets relating to fatality investigations did not contain notes on important discussions that occurred between the compliance officers and the supervisors.

Response: There was no fatality investigation reports reviewed for this e-fame report. As the report indicated, the four fatalities reported to CONN-OSHA were adequately investigated by the supervisor and were determined not to be caused by a workplace condition. As should be expected, the compliance officer should and does maintain close contact with the supervisor during fatality inspections to apprise the supervisor of the developments during the investigation. It is felt that these discussions are updates on the developments of the investigation are not required to be recorded in the case file diary. Important actions related to the investigation will continue to be documented in the case file diary. Any event or action related to the case will also continue to be documented in the case file diary including discussions between the supervisor and the compliance officer as long as the discussion is relevant and is deemed an important event or action in accordance with the requirements of the FOM.

Finding # 3: Case file organization - Some case files' documents were not in the order established by Appendix C of ADM 03-01-005. Since the current file folders do not have paper fasteners, documents have a tendency to become shuffled out of order.

Response: The program manager is currently reviewing the requirements of ADM 03-01-005, Appendix C to determine what changes, if any, need to be made with regards to this finding. Although the case file is assembled in a logical order, documents do have a tendency to become shuffled out of order due to multiple individuals handling the documents after the case file has been filed. This is due to abatement documentation, penalty payments, PMA's, and other correspondence received by the CONN-OSHA office after citations are received. The project will also ensure that all staff members will review Appendix C of ADM 03-01-005. It is expected that a final resolution of this finding will be completed by the end of calendar year 2010.

Finding # 4: SAMM# 8 - CONN-OSHA did not meet the standard of 51.2 for percent of programmed inspections with S/W/R violations, with a percentage of 48.39 in FY2009 for health related inspections.

Response: CONN-OSHA continues to strive to meet the reference goal for health related inspections. Safety related inspections were above the reference goal and the project will strive to be at or above this goal.

Finding # 5: Classifying/Grouping Violations - CONN-OSHA's FY2009 percentage for serious violations was too low compared to its percentage for other-than-serious violations. While CONN-OSHA's percentages were 28 for serious and 70 percent for other, Federal OSHA's percentages were 77 percent for serious and 19 percent for other.

Response: CONN-OSHA compliance officers are familiar with the requirements of Chapter 4 of the FOM including the factors that determine classification of violations. A review of the FOM regarding guidelines regarding grouping violations and how they are being applied is underway. CONN-OSHA is committed to following requirements set forth in the FOM and in related compliance directives regarding this subject. It is expected that a final resolution of this finding will be completed by the end of calendar year 2010.

Finding # 6: Penalty Reduction - During our case review, we determined that most of CONN-OSHA's informal settlement agreements resulted in a penalty reduction of approximately 60 percent. According to OSHA's Enforcement Report (of 11/19/2009), CONN-OSHA had an average penalty reduction percentage of 57.1.

Response: CONN-OSHA has started to follow guidelines established by the National Office regarding penalty reductions given as part of the informal settlement agreement. A maximum of 30 percent penalty reduction will be considered based on good faith efforts regarding abatement information provided by the employer during the informal conference. An additional maximum of 20 percent will also be considered if the employer obtains the services of a safety and/or health professional including CONN-OSHA Consultation Services.

Finding # 7: SAMM# 6, Abatement Verification - CONN-OSHA's FY2009 percentage of 97.96 for S/W/R violations verified timely came close to meeting the standard of 100 percent, but was the program's lowest over the past four years

Response: CONN-OSHA will continue to work harder to meet the standard of 100 percent in this area. An emphasis of timely abatement of all violations will be stressed to ensure that workers are protected from injuries and illnesses from cited violations.

Finding # 8: Abatement Verification - We found that in some municipalities where multiple departments were inspected, just one of the case files contained all of the other departments' documentation of abatement.

Response: Compliance officers have been instructed to ensure that each case file must contain all of the documents related to that particular inspection. Where multiple inspections are conducted in the same municipality, each individual case file will now be maintained separately so each case will stand alone.

Finding # 9: Abatement Verification - In some cases, we noted that the case file had been closed without adequate documentation of abatement. CONN-OSHA must ensure that cases remain open until the agency is satisfied that abatement has occurred.

Response: Compliance officers have been instructed continue existing policy and ensure that adequate abatement documentation for all cited violations has been received before the case file can be closed. The program manager is unaware of any case file that has been closed without adequate abatement information being provided.

Finding # 10: Abatement Verification - Some cases lacked written certification of abatement while others contained abatement letters that did not document abatement for all citations issued. In addition, some case files lacked relevant documents such as written hazard communication programs, evidence of training, and an emergency action plan.

Response: Compliance officers have been instructed to ensure that case files contain written certification of abatement, that abatement letters document abatement for all citations issued. They have been instructed to ensure that relevant documents such as written programs, plans, and evidence of training are received before citations will be considered abated and prior to closing the case file.

Finding # 11: Abatement Verification - Some case files did not contain documentation related to Petitions for Modification of Abatement (PMA).

Response: Compliance officers have been instructed to ensure that case files will contain adequate documentation related to PMA's. Where multiple inspections are conducted in the same municipality, PMA's requested in multiple establishments will also be maintained in each individual case file so each case will stand alone.

Finding # 12: Informal Conferences - Several of the case files we reviewed that had informal conferences did not contain documentation that labor organizations were ever notified of the informal conference.

Response: It has always been the practice of the CONN-OSHA Division to ensure that organized labor and/or rank and file employees are notified of their right to participate in the informal conference. Similar to the response provided in finding # 8 and 11, it is felt that proper documentation may not have been filed each case file when multiple establishments are inspected in the same municipality. Employers are now instructed to provide a copy of the posted Notice of Informal Conference with the date and time the employer posted the notice prior to the date of the informal conference to ensure that employees have been notified adequately. They are also instructed that failure to provide a copy of the notice will result in cancellation of the conference. In addition, compliance officers are instructed to ensure that relevant portions of the OSHA Form 1A relating to labor organizations are adequately completed.

Finding # 13: Informal Conferences - Some case files did not contain notes or other documentation related to informal conferences and/or informal settlement agreements.

Response: Notes and documentation related to informal conferences and informal settlement agreements will be included in each case file. If multiple establishments in the same municipality are inspected and an informal conference is held, each case file will contain the related notes and documentation.

Finding # 14: Informal Conferences - Some cases files' diary sheets did not contain entries with regard to the dates, and location, etc. of informal conferences.

Response: Case file diary sheets will contain entries regarding dates, time, and location of the informal conference. The diary will also contain entries indicating results of the informal conference.

Finding # 15: Whistleblower Program - In two of the cases we reviewed, the lapse time between the date the case was filed and notification of the employer was up to five weeks.

Response: The Office of Program Policy (OPP) will strive to reduce the length of time between the date the case was filed and when the employer is notified.

Finding # 16: Whistleblower Program - None of the case files we examined were assembled in the proper format and order in accordance with [Chapter 5, Section III.B.1 of OSHA's Discrimination Manual \(DIS 0-0.9\)](#). The case files had some paperwork contained loosely in the files.

Response: This finding is currently being evaluated by the OPP. It is expected that a final resolution of this finding will be completed by the end of calendar year 2010.

Finding # 17: Whistleblower Program - Only one-third of CONNOSHA's discrimination cases are completed within 90 days. The SAMM standard is 100 percent.

Response: The OPP will strive to reduce this time frame. The OPP is reviewing this finding and it is expected that a final resolution of this finding will be completed by the end of calendar year 2010.

Finding # 18: Standards/Program Change Adoptions - CONN-OSHA responded well in advance of the June 1, 2009 deadline established in CPL-02-00-148 2009 332 by notifying Federal OSHA of its intent to adopt the FOM on April 22, 2009. However, during our onsite review, the program director acknowledged that he still had not completed a full review of the FOM to determine which provisions, if any, the program would need to modify, since the FOM pertains chiefly to Federal OSHA *private sector enforcement*, and CONN-OSHA is a public sector employee only state plan.

Response: CONN-OSHA is in the process of creating a training program consisting of a chapter by chapter presentation of the FOM. The division is waiting until one health compliance officer returns from maternity leave to train all of the compliance officers on the provisions of the FOM. A full review of the FOM and how it pertains to CONN-OSHA as a public sector only plan is being completed. When completed, any provisions that may require changes will be accomplished and discussed with the Regional Office. Most aspects of the FOM are currently being used by compliance officers. It is expected that a final resolution of this finding will be completed by the end of calendar year 2010.

Finding # 19: Consultation - CONN-OSHA did not meet the 100 percent standard for verifying hazards corrected within a timely manner (14 days within the latest correction due date)

Response: CONN-OSHA continues to strive to meet the referenced standard to verify hazards corrected within the referenced time frame.

Finding # 20: Debt Collection Procedures - CONN-OSHA has not established formal debt collection procedures.

Response: As the e-fame referenced, there has only been one case in recent memory where an employer delayed paying the penalty in a timely basis. This particular case was handled appropriately and has been resolved. The project recognizes that a formal debt collection procedure needs to be established. . It is expected that a final resolution of this finding will be completed by the end of calendar year 2010.

Finding # 21: CSHO Training - In accordance with TED 01-00-018, the program's compliance officers still need to complete #2450 (Evaluation of Safety and Health Management Systems) and #1310 (Investigative Interviewing Techniques).

Response: The three compliance offices identified as requiring completion of the Evaluation of Safety and Health Management Systems and Investigative Interviewing Techniques have been scheduled to take the course through the Office of Training and Education. These employees have been wait listed for these courses.

Finding # 22: Average Number of Day Between Consultation Closing Conference and Issuance of Written Report - CONNOSHA's FY2009 year-end average of 22.33 days was just a bit higher than the standard of 20 days.

Response: CONN-OSHA will continue to strive to meet the referenced 20-day standard.